

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

PATRICIA TYSON

v.

CHICAGO TITLE INSURANCE COMPANY

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD72673
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: September 27, 2011

Appeal From:

Jackson County Circuit Court
The Honorable Twila Kay Rigby, Judge

Appellate Judges:

Division Two: James M. Smart, Jr., P.J., Mark D. Pfeiffer and Cynthia L. Martin, JJ.

Attorneys:

Timothy J. Murphy, Kansas City, MO, for **respondent**.

William L. Sauerwein and James Adam Stockberger, St. Louis, MO, for **appellant**.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

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Before Division Two: James M. Smart, Jr., P.J., Mark D. Pfeiffer and Cynthia L. Martin, JJ.

This case involved the switched legal descriptions of two units of a duplex. For many years, the two properties were each identified in their respective "chains of title" by the legal description of the other property. The misidentification was not discovered for some time and resulted in the filing of a quiet title action, which led to the current appeal.

Dianne Lindwall and three co-owners ("the Lindwall group") purchased one duplex in 1993. The deed received by the Lindwall group identified the property conveyed as "106 SW Donovan" and "Unit 61." However, the proper legal description for 106 SW Donovan, and therefore what should have been listed in the Lindwall deed, was "Unit 60." David Myers purchased the other duplex, "108 SW Donovan," in 2003. The legal description in the deed stated "Unit 60," instead of the correct legal description for 108 SW Donovan, "Unit 61." In connection with his purchase of 108 SW Donovan, Myers executed and delivered a deed of trust in favor of ABN AMRO Mortgage Group, Inc. ("ABN AMRO") on January 3, 2003, which also incorrectly also identified the encumbered real property as "108 SW Donovan" and "Unit 60."

In 2006, Myers listed his unit for sale. An offer was made and accepted, and a contract was signed by Myers and the prospective buyer. Myers' real estate agent contracted with Chicago Title Insurance Co., Appellant, for the required title insurance commitment. Chicago Title discovered that the legal descriptions for 106 SW Donovan and 108 SW Donovan were reversed and required that the descriptions be changed before it issued a title commitment. To satisfy the title commitment, Chicago Title prepared a corrective warranty deed from the Lindwall group to Myers with the legal description for Unit 61, and one from Myers to the Lindwall group for Unit 60. Both deeds were executed and delivered Chicago Title. The foregoing general warranty deeds are hereafter collectively referred to as the "Corrective Vesting Deeds."

Prior to recording the Corrective Vesting Deeds, but subsequent to their delivery, Chicago Title was informed that the Myers real estate deal had been cancelled. Chicago Title, therefore, held the Corrective Vesting Deeds to record in connection with any possible future sale by Myers. However, Myers died without selling his unit of the duplex. Upon learning of Myers' death, and to correct the property tax issues resulting from the improper legal description for the 106 SW

Donovan property, Chicago Title recorded the Corrective Vesting Deeds to correct the errors in the legal descriptions.

Respondent, Patricia Tyson, Myers' daughter, filed a Small Estate Affidavit in the probate division to establish her title as distributee of the property that belonged to Myers at his death. After filing the Small Estate Affidavit, Tyson became the title owner for 108 SW Donovan, which was still encumbered by the ABN AMRO deed of trust. Tyson, however, did *not* make any payments on that deed of trust, even though she knew it existed, which resulted in a default on the deed of trust. ABN AMRO sought to foreclose on the defaulted deed of trust. However, because the deed of trust identified the secured real property as Unit 60, instead of Unit 61, the foreclosure was against 106 SW Donovan, then owned by the Lindwall group.

Having received notice of the foreclosure effort by ABN AMRO on November 13, 2007, the Lindwall group filed a petition to quiet title, in which Tyson and ABN AMRO were necessary defendants due to their claims of interest in 108 SW Donovan and the incorrect legal description contained in the ABN AMRO deed of trust. Chicago Title was not a party to the quiet title action. The parties entered into a consent judgment on December 17, 2008, quieting title in the respective properties and correcting the deed of trust.

Prior to entering into the consent judgment in the quiet title action, Tyson filed a petition for damages for negligence against Chicago Title. Tyson alleged that as a result of negligent actions, Chicago Title was liable to her for attorneys' fees and costs incurred in the quiet title action. Tyson alleged that Chicago Title was negligent in failing to take or complete any action to amend the deed of trust in favor of ABN AMRO and that Chicago Title knew that it had created defects in the title to the property by recording the Corrective Vesting Deeds.

The court conducted a trial in the negligence action and entered judgment in favor of Tyson, and against Chicago Title, in the amount of \$11,531.12. Chicago Title appeals.

REVERSED.

Division Two holds: Tyson did not meet her burden of demonstrating causation in fact, much less proximate causation, such that she was entitled to recover in her negligence action from Chicago Title. Tyson failed to prove that any action or omission of Chicago Title was the proximate cause of her incurring the attorneys' fees and costs associated with the quiet title action filed by the Lindwall group. The ABN AMRO deed of trust identified the "wrong property" *both before and after* the recording of the Corrective Vesting Deeds by Chicago Title. Thus, Tyson's status as a defendant in the title litigation had no causal relationship to anything done by Chicago Title; the quiet title action would have included Tyson whether or not Chicago Title had recorded the Corrective Vesting Deeds. Because the trial court's judgment was not supported by substantial evidence, and misapplied the law, the trial court's judgment is reversed.

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